CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

GLORIA SCOTT AND DEANIA JACKSON	*	
	*	NO. 96-8461
VERSUS	*	DIVISION "I"
	*	SECTION 14
THE AMERICAN TOBACCO COMPANY, INC., ET AL.	*	
	*	
* * * * * * *		

Transcript of proceedings before The Honorable Richard J. Ganucheau, Judge Pro Tempore, Civil District Court, Parish of Orleans, State of Louisiana, 421 Loyola Avenue, New Orleans, Louisiana 70112, commencing on June 18, 2001.

* * * * *

Wednesday Afternoon Session
May 7, 2003
1:39 p.m.

* * * * *

HUFFMAN & ROBINSON, INC., CERTIFIED COURT REPORTERS
New Orleans, Louisiana (504) 525-1753

APPEARANCES:

HERMAN, HERMAN, KATZ AND COTLAR, L.L.P.
Attorneys at Law
(By: Russ M. Herman, Esquire
Stephen J. Herman, Esquire)
820 O'Keefe Avenue
New Orleans, Louisiana 70113

- AND -

BRUNO AND BRUNO
Attorneys at Law
(By: Joseph M. Bruno, Esquire)
855 Baronne Street
New Orleans, Louisiana 70113

- AND -

LEGER AND MESTAYER
Attorneys at Law
(By: Walter J. Leger, Jr., Esquire
Christine L. DeSue, Esquire)
9th Floor
600 Carondelet Street
New Orleans, Louisiana 70130

- AND -

GERTLER, GERTLER, VINCENT AND PLOTKIN, L.L.P.
Attorneys at Law
(By: Michael H. Gertler, Esquire
Louis L. Gertler, Esquire)

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127-129 Carondelet Street
New Orleans, Louisiana 70130

- AND -

MURRAY LAW FIRM, APLC
Attorneys at Law
(By: Stephen B. Murray, Esquire)
Suite 2550
909 Poydras Street
New Orleans, Louisiana 70112

- AND -

BENCOMO AND ASSOCIATES
Attorneys at Law
(By: Raul R. Bencomo, Esquire)
Suite 2110, One Poydras Plaza
639 Loyola Avenue
New Orleans, Louisiana 70113

(Attorneys for the Plaintiffs)

JONES DAY
Attorneys at Law
(By: Mark A. Belasic, Esquire)
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190

- AND -

STONE PIGMAN WALTHER WITTMANN, L.L.C.
Attorneys at Law
(By: Phillip A. Wittmann, Esquire)
546 Carondelet Street
New Orleans, Louisiana 70130

(Attorneys for the Defendant,
R. J. Reynolds Tobacco Company)

KING AND SPALDING
Attorneys at Law
(By: Richard A. Schneider, Esquire
Jack M. Williams, Esquire)
191 Peachtree Street
Atlanta, Georgia 30303-1763

(Attorneys for the Defendant,
Brown and Williamson Tobacco
Corporation, individually and
as successor by merger to
The American Tobacco Company)

ADAMS AND REESE, L.L.P.
Attorneys at Law
(By: Charles F. Gay, Jr., Esquire
Ronald J. Sholes, Esquire)
Suite 4500, One Shell Square
701 Poydras Street

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New Orleans, Louisiana 70139
(Attorneys for the Defendant,
Philip Morris, Incorporated)

SHOOK, HARDY AND BACON, L.L.P.
Attorneys at Law
(By: Gary R. Long, Esquire)
One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105-2118
- AND -
GORDON, ARATA, McCOLLAM, DUPLANTIS
AND EAGAN, L.L.P.
Attorneys at Law
(By: Steven W. Copley, Esquire)
Suite 4000
201 St. Charles Avenue
New Orleans, Louisiana 70170-4000
(Attorneys for the Defendant,
Lorillard Tobacco Company)

THE SPECIAL MASTER:
Dominic J. Gianna, Esquire
Middleberg, Riddle and Gianna
Suite 3100
201 St. Charles Avenue
New Orleans, Louisiana 70170-3100

REPORTED BY:
CHERYL FOURNET HUFFMAN, RMR, CRR
Registered Merit Reporter
Certified Realtime Reporter
(No. 75009)
Huffman & Robinson, Inc.
One Shell Square, Suite 250 Annex
New Orleans, Louisiana 70139
(504) 525-1753 (800) 749-1753

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I N D E X

WITNESS: PAGE

DAVID E. TOWNSEND, Ph.D.

CONTINUED CROSS-EXAMINATION
BY MR. BENCOMO.....20230

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P R O C E E D I N G S

(Outside the presence of the jury in open court:)

THE COURT:

All right. I indicated that we would have a hearing on the "DEFENDANTS' MOTION TO PRECLUDE AND REDACT REFERENCES TO THE NAMES OF DEFENSE COUNSEL'S LAW FIRMS" at this luncheon recess. And I presume -- I have received the plaintiffs' memorandum in opposition. I presume both sides are ready to argue that motion.

Defense counsel, movers, ready to proceed on the motion?

MR. LONG:

Yes, Your Honor.

THE COURT:

Plaintiffs' counsel in opposition to the motion ready to proceed?

MR. RUSS HERMAN:

Yes, Your Honor.

But we have a bit more to argue than is

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actually in the brief. We tried to put everything we could within the time frame in the brief, but there are two issues or pieces of evidence that we're going to need to talk about.

THE COURT:

Say that again. There's some -- Are you speaking of something out of Florida and something out of Washington?

MR. RUSS HERMAN:

No, no.

Really, what I'm talking about, Your Honor, is that this issue was raised and briefed in a motion by the defendants on August 2001.

THE COURT:

All right. Well, we'll get to that when it's your turn.

MR. RUSS HERMAN:

Well, the piece of evidence that's missing, I couldn't put my hands on, was your denial of that motion on September 17th, 2001. And I'd like permission to add that when I have the opportunity.

THE COURT:

September of 2001, did you say?

MR. RUSS HERMAN:

That's correct.

THE COURT:

Okay. And let's not use more words than are necessary since the jury is waiting and we have a witness on the stand.

For the movers. Mr. Long?

MR. LONG:

Yes, sir.

Your Honor, the reason we filed this motion is that it's become obvious to us that plaintiffs -- one of the plaintiffs' strategies in the cross-examination of our witnesses is to sow the seeds for an argument in closing that would improperly impugn the integrity of trial counsel.

We think it's obvious that's what they're trying to do, having introduced numerous documents or a few documents that mention Shook, Hardy & Bacon or Jones Day, and then through the testimony of Professor Viscusi, that cross, saying "And those lawyers that are in this courtroom, those lawyers from Shook, Hardy, those lawyers from Jones Day are in this courtroom."

And, obviously, the jury has heard this. And we anticipate this argument that says, "You've seen these bad documents, you've seen these law firms' names in these documents, these law firms did bad things, and these lawyers are with those law firms, so you

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can't trust a thing they say."
THE COURT:
Well, let me stop you there, if you would --
MR. LONG:
Okay.
THE COURT:
-- and give you the benefit of my thought pattern.
Everything that you've referred to is a fact. The names are on the documents, the names are on the books, the lawyers are here.
Okay. Now, I don't know where you get to go from the statement of those facts to impugning the integrity of defense counsel in closing when I tell this jury -- and I may have already told them, but I certainly will

tell them again if I have already, and I will tell them if I haven't -- what the lawyers say is not evidence. The evidence comes from the witness and the documents.
So I don't follow your leap of logic between the state of the exhibits that have law firms' names on them, the state of the pleadings that have law firms' names on them, and impugning the integrity of defense counsel as a result of those things.
And I have a problem with that.
MR. LONG:
I have a problem with that, too.
That's the leap of logic that I am afraid, the defense counsel are afraid that the plaintiffs are going to make in closing argument.
THE COURT:
But don't you have a right to get a limiting instruction in closing when we talk about the close and closing arguments in the case?
MR. LONG:
We have a right to give limiting instructions. And we will probably file some motion to preclude that type of argument in general.
THE COURT:
Okay.
MR. LONG:
What I'm bringing up here is that The Court has ruled on this issue in different

circumstances.
THE COURT:
And I've read your brief on that.
MR. LONG:
Yes.
THE COURT:
And I did it in voir dire to some extent and I've done it in maybe opening, I've

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yellow underlined it in your pleadings, but -- Go on.

MR. LONG:

All right. Well, recently, for example, when Dr. DeNoble was on the stand, Your Honor granted a motion in limine concerning Dr. DeNoble's testimony about the law firm coming to review documents at Philip Morris included in his lab. That was granted.

Then a situation arose with Viscusi. The surveys had Jones Day and Shook, Hardy --

THE COURT:

The surveys.

MR. LONG:

The surveys.

And we had an in-chambers conference and we discussed that. And I stated our position was we think it would be better, for purposes of avoiding prejudice, to redact the law firm names of the documents.

But if that was not done, the real prejudice would come in if the plaintiffs' counsel were able to identify members of the defense team as being with those law firms.

And then Mr. Herman said, quite artfully, "We don't intend to identify specific lawyers as being with those law firms." I thought the problem was solved.

But then over our objection, the plaintiffs' lawyers were allowed to repeatedly point out that lawyers from Jones Day in Cleveland and lawyers from Shook, Hardy & Bacon in Kansas City were on the defense team in this case.

THE COURT:

I agree with everything you said. What's wrong with that?

MR. LONG:

Well, the issue is, with those firms in this case, is an issue of relevance. And it's also an issue of 403, if they're allowed to make this argument.

THE COURT:

I'm going to -- That's questions for the other side, the relevance issue.

MR. LONG:

Yes.

THE COURT:

I'm asking questions that I think are relevant to your side.

What's wrong with that, Jones Day? There are some law firms in this town who are very proud to be all over the map and they like people to know it.

MR. LONG:

I think Mr. Belasic is proud of his

firm, I'm proud of my firm.

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What I'm trying to short-circuit here is an argument in closing that we're bad guys and we're not to be trusted because we're with law firms whose names are on these documents.

THE COURT:

I can stop that.

MR. LONG:

That would be fine.

THE COURT:

I can stop that.

And, again, I'll repeat to you when I tell this jury it's your case to decide, and you're to decide it based on the evidence that came from the witness' mouth and the documents that you're going to see and nothing that the lawyer says is evidence.

I don't know that I've told them that yet. I guarantee you I will tell them before they deliberate. And I'll say it twice, if you think that's better. But they're certainly going to hear those words from me.

And what I struggle with is that your side brought the books in for Dr. Viscusi, I think it was. And somebody noticed what was stamped under the back cover. It's your exhibit, it's their discovery, and it's a fact.

Now, does that cast a dispersion on defense counsel? I don't think so.

MR. LONG:

I don't think so.

THE COURT:

You must.

MR. LONG:

No, I'm concerned that they will try to cast dispersions. I don't think it casts a dispersion at all. I question its relevance and I question its 403 balancing test, considering what arguments I anticipate they're going to make.

I mean, that's the gist of the real thing, Your Honor, is trying to cut off evidence which we think is questionably relevant, the question is irrelevant, but has serious 403 concerns that they're going to set up this argument in closing that "This guy is with Shook, you saw his name in other documents, he has no integrity, you can't trust him, this guy is with Jones Day." You see, that's the gist of really our concern here.

THE COURT:

I won't allow that in closing. And I'll give you that prospective ruling. Casting dispersions on opposing counsel is always condemned.

And in the heat of trial, some lawyers stray from their ethics. But I think everybody in this room who is trial counsel

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has a high degree of ethical sense and responsibility. And if they stray, I will hold them to it.

Now, what else?

MR. LONG:

Given my responsibilities, I'll sit down now and just rest on what we put in the papers.

THE COURT:

Response?

MR. RUSS HERMAN:

First of all, Your Honor, under the Disciplinary Rules 3 and 4, it would be improper for me or any member of our trial team to point to some individual lawyer. There's a way to do that. It hasn't been necessary to do it in this case. No lawyer has ever used, on our side, any name of any defense lawyer in this case in terms of integrity.

Now, so I want to put that aside. The fact is we are met with the same argument, same briefing, over and over and over again. On August 2001, the defendants made this argument in brief, they had made it before The Special Master, they had made it before you, both on relevance and prejudice, and it was ruled out. They were overruled.

And the reason they were overruled is clear -- the order was on September 17th, 2001 -- is because in a conspiracy case, in a misrepresentation case, there is relevancy to what direction, as pleaded, any attorneys give their clients outside of the attorney-client privilege. And that's what

the ruling is.

Now, Mr. Bruno put Dr. DeNoble on the stand on February 6th, 2003. And the way I count, that's eighteen months after the original ruling. Mr. Richardson for the defendants made an objection. It was sustained that Shook, Hardy could not be mentioned because Dr. DeNoble could not identify the specific lawyers.

If Dr. DeNoble had been able to identify Shook, Hardy as the lawyers or Jones Day or King & Spalding or any of the defense lawyers, it would have been relevant and not prejudicial as to who closed his lab up. Because that is not a lawyer activity within the attorney-client privilege.

Now, we try to adhere to the spirit of Your Honor's rulings and not be redundant in the motions we bring. So from February 6th, 2003 until April 10th, 2003, until after we had rested our case, Shook, Hardy attorneys put an expert they vouched for on the stand

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who has listed two surveys in his reliance documents, who talks about them in his qualifications, who gives testimony that they were directed by Shook, Hardy and they were directed by Jones Day on both surveys.

We didn't put it there. They could have brought a motion to redact. They didn't. They didn't. And it was relevant, they brought it forth, we had a right to cross, it is an issue in the case.

Now, notwithstanding that, Your Honor knows that every juror selected, including the one thousand two hundred who weren't selected, two hundred-plus, received a jury questionnaire in which the defendants' firm names and individuals were mentioned. It was no secret. It was no secret originally when counsel for Shook, Hardy identified himself. We didn't do that.

From the inception of this case, there have been documents from Jones Day and Shook, Hardy that are outside privilege. Now, every counsel -- And I respect the lawyers in this case. We've been litigating now, most of us, since 1996 in this case. If they believe that somehow their firms are an issue in the case, they can take appropriate action. But they can't preclude relevant, necessary issues of fact based on that.

Lastly, Exhibit 3359.01 admitted February 13th, 2003, 3515 admitted 2-5-2003, Exhibit 3151 admitted 2-4-2003 all mention Shook, Hardy or their partners, though not in this case by name. Those documents run from 1964, 1978 and 1980.

Exhibit 2858 admitted 2-5-2003 in 1974, 3441 in 1975 all mention the industry meeting with their lawyers. 1164 admitted at Page 12159, February 6th, 2003, again mention and state on the cover "Shook, Hardy memo."

Most respectfully, Your Honor, we were met with this motion this morning. We have

not been prejudiced by any time delay. We believe that the facts are so evident in this record that an hour was more than enough to write a decent brief and respond to these issues. And we ask Your Honor to again deny this motion.

Thank you, Your Honor.

THE COURT:

I want to talk about the relevance issue, the law firm identification and names on cross of these witnesses, Mr. Herman. It has not been a big problem up to this point. And it may not get to be a big problem.

But I think it's a legitimate concern of the defendants as to what is the relevance of

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this jury continuing to hear references to these law firms going back many years, fifteen, twenty, thirty years at some point.

Now, in the situation where it's their exhibit and their name's on it, the surveys, the books, I'm not referring to that at all. I'm referring to questions that refer to defense lawyers in the room, firm identification when it has literally little or nothing to do with what's at issue.

I recognize that when you're talking about qualifying an expert on the bias issue, it could have some relevance; hence, my rulings on that score. But on redirect -- I mean, on cross-examination on the merits, relevance in terms of reference to these law firms and their length of association with

the defendants in the case seems to me to be a stretch to make it relevant. And I'm thinking outloud because time is short.

And I say that to you because that's what's on my mind at this point.

MR. RUSS HERMAN:

I could give you the relevance, Your Honor.

THE COURT:

And I recognize it's a question-by-question call for me when an objection is made. But I --

MR. RUSS HERMAN:

Well, first, --

THE COURT:

Go ahead. I've said everything.

MR. RUSS HERMAN:

I think if you read the transcript back, you'll see that what counsel said is, well, relevance isn't the issue; the issue is 403 prejudice. That's what he said.

Now, let me -- But Your Honor is entitled to make your own independent judgment, no matter what the other side says.

THE COURT:

If the objection doesn't come, I'm not going to intervene. But it may come because of what I've said.

MR. LONG:

Objection.

MR. RUSS HERMAN:

Now, Mr. Belasic is the one that

introduced the issue in this testimony. Mr. Belasic said: The lawyers haven't told you what to say? The lawyers haven't put you through mock juries? The lawyers can't tell your science department what opinions to come up with?

THE COURT:

Okay.

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MR. RUSS HERMAN:
That's what the relevancy is.
Aren't we entitled, when Mr. Belasic elicits directly from a witness his statements, to cross-examine on those issues?
THE COURT:
Certainly, you are.
MR. RUSS HERMAN:
Well, that's the relevance.
THE COURT:
And if it gets to that point and that's the type of question asked, I will consider it in that light.
I think this may be another one of those tempests that is really not as big as it sounds at this point. We've had many of those. And these mountains have relegated themselves to molehills without any help from me. And maybe this will be one of them.
MR. RUSS HERMAN:
One other issue on relevance because I don't want some other issues prejudged. I don't know who they're going to call as witnesses.

As I pointed out to The Court, they've got 25 company representatives listed, either present or former employees. We intend -- and I'm announcing now -- to cross-examine from their company documents, which have been admitted into evidence, which are outside the privilege, who was X lawyer who gave this directive to your science department? And we believe that that's relevant. So all I'm doing is stating that.
There's just one other thing before the jury comes in, Your Honor, and Your Honor rules, if Your Honor wants to rule, I have another issue that I could bring up very quickly.
THE COURT:
Let me read the prayer.
MR. LONG:
Your Honor, I have just a couple of minutes, if you would, on this one.
THE COURT:
Mr. Long?
MR. LONG:
Just a couple things briefly, Your Honor.
On Dr. DeNoble, looking at the transcript, Your Honor didn't grant the motion in limine because he couldn't say it was Shook, Hardy & Bacon lawyers. Mr. Bruno said in arguing that he knows they were Shook, Hardy & Bacon lawyers. That's incorrect.

Secondly, the jury does have some

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information through the questionnaire and early voir dire, as Your Honor directed, we did identify our firms.

Now, again, the concern that I have is moreso "These lawyers are with these firms," "These lawyers are with these firms." It's obvious these guys are going to argue in closing that "Shook, Hardy & Bacon is part of the conspiracy, Jones Day is part of the conspiracy." And we'll have to wrestle and make objections on that.

I think the most important thing is to preclude these further references on cross-examination to "And these lawyers are in this room," "These lawyers are at this table." That's the biggest concern. And that's the relevancy issue you didn't mention, which I did argue earlier. But it's a relevancy issue. There's none. If they want to claim there's marginal relevance --

THE COURT:

I don't know how to do what you're asking me to do without hearing the question or seeing the gesture or the reference made on anything other than a question-by-question basis.

And I recognize that once a fellow's been wrong, you've got a problem. But I, frankly, don't know how to do what you're asking me to do without some prior restraint order against the plaintiffs.

All I could ask them is to be mindful of it that the relevance issue, I think, is important. And I suppose mistrials can come on cumulative stuff. But I don't think anybody in this room wants a mistrial. And I certainly don't.

But I don't know how I can do what you're asking me to do without hearing the question and having the objection come. And then I'm pretty sure you would say at that point the damage is done.

But what's the remedy?

MR. LONG:

I think the remedy may be that there would be no questions such that the Shook, Hardy name or the Jones Day name comes in, no questions, "And these lawyers, lawyers from these firms are defending this case," that type of thing, because that's the relevance issue.

THE COURT:

Let's go back to Viscusi and the books, okay?

MR. LONG:

Yes.

THE COURT:

The exhibit's in.

MR. LONG:

I realize that.

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THE COURT:
Nobody looked at that, okay? Would you say that was objectionable?

MR. LONG:
Yes.
THE COURT:
How can it be? It's your exhibit. You put it in. You may not have known it was there.
MR. LONG:
What's the relevance of the -- You mean the books went into evidence?
THE COURT:
Yes.
MR. LONG:
I don't recall the books themselves going into evidence.
THE COURT:
If Viscusi said, "Did you bring these books?" And you said, "No, somebody else brought them." Where did they come from, okay?
MR. LONG:
I'm not sure that the books went in evidence.
I think what I'm pointing out is there's a difference in impact between a single bell and a symphony. And I want to avoid these repeated references to "And these guys are in this room," "And these guys are in this room."
THE COURT:
I think the best I could do is take it on a question-by-question basis. And as it comes up, if you object, if you hear the

beginnings of a symphony, let me know. And I'll try to listen for the music.
MR. LONG:
I'll be sure to chime in, Your Honor.
MR. RUSS HERMAN:
We won't have any unfinished symphonies.
THE COURT:
I have signed the order setting this hearing for 1:15 p.m. And the prayer is "Defendants respectfully request that this Court enter an order precluding any further reference to the names of defense counsel's law firms and directing plaintiffs to redact all references to either Jones Day or Shook, Hardy & Bacon in exhibits used or admitted at trial and to replace such references with generic descriptions such as, quote, 'outside counsel,' closed quote, or, quote, 'counsel for,' closed quote, a specific defendant," the motion is denied.
MR. RUSS HERMAN:
Your Honor, just one more thing very

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quick.
THE COURT:
Yes.
MR. RUSS HERMAN:
For two weeks now -- we have had this discussion in chambers and on the record -- there are supposed to be will-call witnesses submitted to Your Honor.
I was advised this morning, now that we have reviewed close to thirty trial

transcripts and depositions, that Mr. Whidby, who they said for two weeks was going to testify next week, may not testify.
We don't know who the live witnesses are. Unfortunately, we can't wait till Friday. Mr. Gertler disclosed that his son is graduating this weekend from Syracuse University. I have hearings Friday morning -- well, I shouldn't say hearings. I have legal matters to resolve in Boston on Friday.
If the defendants are changing their will-call list for next week, we need to know about it. We can't get served 48 hours ahead of time with a whole bunch of transcripts we don't know about after they've already made a disclosure.
You have directed these lawyers, and us, not to play games. And this is a situation that really is not tolerable. At least we could get the numbers -- the names of the potential witnesses so that we could prepare those.
THE COURT:
I have a letter dated April 28th, '03 over Mr. Copley's signature that "The defendants submit the following revised list of will-call witnesses."
And are you referring to Jerry Whidby, W-H-I-D-B-Y?
MR. RUSS HERMAN:
Yes, I am, Your Honor.
THE COURT:

And are you now advised that that person will not be called?
MR. RUSS HERMAN:
As a courtesy to me, Mr. Gay advised me in court this morning that he wasn't sure Mr. Whidby would be called next week at all.
THE COURT:
Well, does that refer, Mr. Gay, to scheduling or whether or not this man will be called in this trial?
MR. GAY:
We plan to call him, Your Honor. We just can't -- It's a scheduling thing. And I wanted to give Mr. Herman notice of that because I know he's working on it. And it

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was a courtesy thing for him.
THE COURT:
Well, have you informed opposing counsel of the live witness plan for next week? Whoever wants to respond. I don't know who's calling next week, but --
MR. WITTMANN:
Your Honor, we've been operating, I thought, under the same rules that the plaintiffs were to give the names of the witnesses the next week on the Friday preceding that week. Now, we did, in response to Your Honor's request, amend our will-call list.
But we have scheduling problems, just like the plaintiffs have had, and we're doing our best. And we'll certainly tell them who

our witnesses will be for next week, in accordance with The Court's order, for Friday of this week.
MR. RUSS HERMAN:
As Your Honor will recall, the record is going to reflect on numerous occasions during our direct testimony we gave as much notice as we could, sometimes two weeks ahead of time.
Now it's true that the order calls for 48 hours. But when you tell the other side we're going to call these people, and they're our will-call witnesses, and we show up on a Wednesday faced with a motion that's filed that morning and we're also told, after spending a large amount of time preparing for those witnesses, those witnesses may not be called, that's not a courtesy.
THE COURT:
Well, I think Mr. Gay said it's not a question of whether; it's a question of when, when I asked him about Whidby.
MR. RUSS HERMAN:
Right.
THE COURT:
Well, I have to accept their statement that it's a scheduling problem, Mr. Herman. I don't know what I can do about that.
MR. RUSS HERMAN:
Well, we could at least know, if they have a will-call list, who the potential witnesses are for next week so that we can

prepare them and so that Mr. Gertler can go to his son's graduation.
THE COURT:
I have a list of will-call witnesses dated April 28th, '03. And there are five or six who are not by deposition. And I think that's your will-call list.
Which ones come next week? I think you

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find that out Friday, which is what they're doing to comply with my order. If they won't do any more than that, I'm not going to change the rules in the middle of the game.

MR. MICHAEL GERTLER:

I understand, Your Honor.

And I would just like to ask the defendants, as a personal favor to me, since I'll be gone Friday and Monday due to the graduation, that if they could let me know as soon as possible before Friday about the scheduling of Dr. Boyse.

MR. WITTMANN:

Do you have Dr. Blackie?

MR. MICHAEL GERTLER:

Yes, I have.

MR. WITTMANN:

You do?

MR. MICHAEL GERTLER:

Yes.

MR. WITTMANN:

He will be on Monday.

MR. BRUNO:

That's a she.

MR. WITTMANN:

She. I'm sorry.

MR. BRUNO:

She changed her name.

MR. MICHAEL GERTLER:

That's set in stone? You can't change that at all?

MR. WITTMANN:

No. I just got this note today, just a moment ago. It's not set anywhere. That's what my co-counsel advised me.

THE COURT:

Who is --

MR. WITTMANN:

That's a witness of B & W, Your Honor.

MR. SCHNEIDER:

That's our witness, Your Honor. She's coming from London.

THE COURT:

What is her name?

MR. SCHNEIDER:

Dr. Blackie, Sharon Blackie, former name Boyse, B-O-Y-S-E.

THE COURT:

Oh, Boyse is now Blackie?

MR. SCHNEIDER:

Right. That's her maiden name, which she's returned to. She's coming in from London, she'll be here Sunday night, and we'll put her on Monday.

THE COURT:

Let's get the jury in, please.

THE BAILIFF:

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All rise for the jury, please.
(Whereupon the jury joins the proceedings at this time.)
THE COURT:
Please have a seat.
Mr. Bencomo, are you ready to continue with your cross-examination?
MR. BENCOMO:
Yes, Your Honor.
Thank you, Your Honor.
Good afternoon, ladies and gentlemen of the jury.
THE JURY:
Good afternoon.
MR. BENCOMO:
Dr. Townsend.
THE WITNESS:
Good afternoon.
CONTINUED CROSS-EXAMINATION
BY MR. BENCOMO:
Q. Sir, I asked you at some point this morning about your beliefs. Do you remember that?
A. Yes.
Q. And you gave us the answer.
And I forgot, I neglected to ask you how long have you actually believed that smoking does cause cancer?
A. I'm sorry?
Q. How long have you believed that smoking causes cancer?
A. I think you've misunderstood my belief and

what I personally believe about causation.
Q. Well, do me a favor then and just restate it so that I can then follow up and ask you how long have you believed that?
A. I'd be glad to.
Certainly, I believe, without question, that cigarette smoking is a major risk for lung cancer and a number of other chronic diseases. I think it may cause cancer, particularly in some individuals.
I think the scientific proof to definitely prove that cigarette smoking causes lung cancer, however, is incomplete. I think it's more probable than not that it does. And I think, ultimately, genetic research will lead us to that point.
Q. Okay. My question is how long have you believed that?
A. Pretty much the whole time.
I mean, I think, you know, my understanding of genetic research has altered that part of the answer. I think the total, as I've become more knowledgeable about biology and toxicology, I think that's led to my belief that it's more probable than not.
But, certainly, you know, at the end of the day, I think my belief has been what it has been for as long as I can remember. I simply don't know whether cigarette smoking directly, by itself, in itself, causes cancer. I think it may and particularly for some individuals.

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Q. But if we were to put a timeline on that belief, and you said as long as you can remember, are you talking about when you were in your early

twenties?
A. I think that's fair as far as I can remember.
Q. And I think we've already established, but I just want to make sure to make the point of reference, that insofar as your beginning to smoke at age 27, that was a choice that you made very obviously as an adult?
MR. GAY:
Objection. Repetitious.
THE COURT:
Sustained.
EXAMINATION BY MR. BENCOMO:
Q. Dr. Townsend, I believe that you've testified that the cigarettes that you smoke, the Eclipse and -- What was the other one?
A. Salem Ultra Light.
Q. -- Salem Ultra Light, do you believe that those are lower risk or reduced risk cigarettes when it comes to smoking and health?
A. Compared to what?
Q. Compared to high-tar, high-nicotine cigarettes.
A. Such as?
Q. Well, I don't know your brands. You tell the jury.
A. I think as a class, ultra low-tar cigarettes like Salem Ultra Light, probably pose less risk to smokers than do very high-tar cigarettes, I believe that. I also believe that Eclipse, one of the brands I smoke, probably is a reduced risk cigarette, probably safer, for a number of diseases.
Q. And you believe that in your capacity as the

Executive Vice-President in charge of Research & Development at Reynolds; is that correct?
A. I do.
And I also believe that in my -- as the result of being a scientist and having looked at a lot of information and data.
Q. Now, do you recall yesterday when you were asked if you were familiar with the statistics that 90 percent of all smokers have begun smoking by the time they're 18? Do you remember that?
A. I remember the question.
Q. All right. Now, the other 10 percent would encompass individuals such as yourself who started smoking as adults; is that a fair statement?
A. Well, I don't know that the -- that your original statement of numbers is correct. I just simply don't know.
Q. Okay. Why don't you assume for a moment it's 90 percent or thereabouts. Fair enough?
A. I don't know whether that's true. But you're posing a hypothesis, I'll assume that.
Q. Right. It's a hypothet.

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And then let's assume that the other 10 percent encompass individuals such as yourself who started smoking as adults, who were able to make that rational decision, okay? That's the hypothesis I'm working on.

Do you follow me so far?

A. I follow you.

Q. Okay. Is it not a fact, sir, that if such were the case, and only adults smoked, only adults began to smoke, that that would eliminate

approximately 90 percent of the market based on my hypothet?

A. Well, on the surface of it, based on your hypothesis, which I'm not sure whether that's true or not, I think that would be one conclusion you might draw.

Q. Okay. Well, I'm not the one that's here to answer under oath. Is that a conclusion that you might draw?

A. Well, I'm not sure I -- I'm not sure I'd agree with the hypothesis. But if I accepted the hypothesis and 90 percent -- only 10 percent of smokers were adults, then 90 percent, if they didn't smoke, that would be that reduction in smoking.

Q. Okay. And, needless to say, Reynolds would go from selling 90 billion cigarettes a year to a significantly lower amount because you would only have a much smaller universe of smokers to sell to; is that not correct?

A. If fewer people smoked, we sell fewer cigarettes.

Q. But not just fewer, significantly fewer?

A. If significantly fewer people smoked, we'd sell significantly fewer cigarettes.

Q. And you would agree, sir, that that would also be the case for your competitors?

A. More than likely.

Q. And then a company like Reynolds or a company like Philip Morris would go from a certain rung, meaning on a ladder-type basis, to a much lower rung in, for instance, the Fortune 500 list of large companies or largest companies in America; is that

not correct?

MR. BELASIC:

Objection. Relevance, Your Honor.

MR. GAY:

Speculation.

THE COURT:

Approach the bench.

MR. BENCOMO:

Yes, Your Honor.

(Whereupon a bench conference is held at this time as follows:)

THE COURT:

What's the relevance of the question to what's at issue before this jury, Mr. Bencomo?

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MR. BENCOMO:
Your Honor, the relevance is that Mr. Belasic yesterday asked him, well, you know, if we had developed Premier and if it was a successful cigarette, it would be a much larger box of profits and all that.
So I'm showing the reverse, the opposite side of that coin. He opened the door to that, Judge.
THE COURT:
Well, your question is prefaced by not brand success but smoking age. And he didn't -- he didn't open that door.
MR. BENCOMO:
Well, but smoking age is a part of the whole equation in this case. And all the statistics show --

THE COURT:
The issue is what is the relevance of volume of sales to the issue that's before this jury in this case and the size of the company in terms of Fortune 500, that's the objection.
MR. BENCOMO:
Also, the other relevancy has to do with the fact that he wouldn't be making 382,000 dollars a year. That's one of my questions. No company who sells one-tenth of what they actually sell today is ever going to be able to pay a guy like that what they're paying him. And that's why he wants to keep that market up and that illusion up. That's part of the whole deal, Judge.
THE COURT:
No, I think the relevance is too, too long a stretch. I sustain the objection.
MR. BENCOMO:
I'll withdraw the question.
MR. BELASIC:
The objection is sustained on the record.
MR. BENCOMO:
I'll just withdraw it.
THE COURT:
Well, you need to do it openly.
(Whereupon the bench conference is concluded at this time.)
MR. BENCOMO:
Your Honor, I'll withdraw my question.

EXAMINATION BY MR. BENCOMO:
Q. Going back to the reconstituted tobacco, Dr. Townsend, you showed yesterday what I believe was AS-485 and AS-490.
And I don't know whether Kendall has it or Mr. Belasic. Could somebody help me with the recon tobacco? I think it's --
MR. BENCOMO:

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May I approach, Your Honor?
THE COURT:
You may approach.
MR. BENCOMO:
Thank you.
EXAMINATION BY MR. BENCOMO:
Q. I just want to make sure that I understand something, Dr. Townsend.
AS-485, if you would hold that up for the jury for a second.
A. They're both labeled AS-485.
Q. Well, the numbers that I was given yesterday were AS-485 and AS-490, so let me see --
MR. BENCOMO:
May I approach again, Your Honor?
THE COURT:
Yes.
MR. BENCOMO:
Thank you.
You're right.
EXAMINATION BY MR. BENCOMO:
Q. The lighter of the two --
A. Right.
Q. -- tell us again what that represents.

A. This is reconstituted paper or tobacco, tobacco paper sheet, that's made by a paper process without reapplying the water soluble extracts.
Q. All right. Let me just stop you there.
MR. BENCOMO:
Can we put up that 620 again, please?
May we publish that, Your Honor?
THE COURT:
Yes.
MR. BENCOMO:
Thank you.
EXAMINATION BY MR. BENCOMO:
Q. So those blue drops that should really be brown, that would be assuming that they're not going back into the process; is that correct? Is that what we're looking at?
A. That's basically right. That water soluble extract is not reapplied to the tobacco paper sheet.
Q. And the reason, if you don't mind holding that up again for the jury, the reason that that particular sheet is lighter than the next one I'm going to ask you to put up is because you have not put back that brown-colored --
A. Tobacco extract.
Q. -- tobacco extract?
A. Yes.
Q. Is that a fair statement?
A. That's correct.
Q. Okay. Now, that particular sheet, the light one again that you have in front of you, is that something that is commercially used?
A. Not to my knowledge.

You know, we've certainly looked at using

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reconstituted tobacco without extract reapplied. We don't see those as commercially acceptable products. The reconstituted tobacco that's used in commercial products includes the reapplication of the water extracts, as in this sample.

Q. The dark one that you have in your hand?

A. Yes. This is a commercial product.

Q. So the only reason why you brought that light-colored sheet, if you will, was to show this jury it has no applicability whatsoever, it's not put into any of your light cigarettes or any of the products that you sell to consumers in America; is that a fair statement?

A. No, that's not exactly right.

Q. Okay.

A. I think the jury and The Court certainly can recognize that the dark tobacco with the water soluble extract reapplied is, in fact, more like tobacco because we've taken it apart and we've put it all back together. And this is brown, much like tobacco that hasn't been processed.

This really isn't like tobacco that hasn't been processed. You see it's much lighter, it's also much more brittle. It doesn't contain the water soluble extracts that carry flavors and aroma compounds.

Q. All right. And I apologize. I may not have made myself clear. All I was asking is that light sheet is not used commercially?

A. I think I've answered that. That's right, it's not used commercially.

Q. All right. But you do agree, do you not, that you have the technology to remove the nicotine and, if you so choose, speaking of choice, you don't have to put it back in as a manufacturer?

A. We have the technology to remove most of the nicotine through a water extraction process like this. There are other processes that can remove most of the nicotine, not all but most.

And that particular material without the water soluble extract, which carries with it some nicotine, that particular reconstituted tobacco without extract is not consumer acceptable. It doesn't have good smoking qualities.

Q. And I believe that Mr. Belasic then asked you questions about the manipulation of tobacco or nicotine, rather. He asked you whether or not you manipulate nicotine. Do you recall that?

A. I recall that.

Q. And your answer was what?

A. We do not manipulate nicotine. We do adjust blends sometimes for nicotine consistency in the products because nicotine consistency is important. Tar consistency is important and other consistency issues. But we do not manipulate nicotine in our commercial products.

Q. Are you able to remove the nicotine from the extract and leave other flavorants in that process?

A. I think it's possible to do some of that. You can certainly process extracts taken from this

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process, you can process it to reduce the nicotine substantially. You can add things to it. I think there's a lot of things technically you can do.

Q. When you say it's possible, have you ever tried to do that?
A. We've had a number of experiments going to try to process extracts of tobacco to accomplish a number of things, including reducing nicotine level, including raising nicotine level for the purpose of making a Russell-type cigarette that might be reduced risk, we've had other efforts to process extracts like this to reduce some chemicals in that extract so that when we reapply the extract, it might be a safer cigarette. We've looked at all those.
Q. Now, do you recall that after that, Mr. Belasic asked you about the expanded tobacco that you sell as part of your product?
A. I remember the discussion about expanded tobacco.
Q. All right. And you basically told the jury that expanded tobacco is a lot like popcorn; do you recall that?
A. Well, I said the process of expanding tobacco is a lot like popping popcorn where you take something that's small and expand it very rapidly so that it occupies a larger volume.
Q. Well, I'd like to just kind of discuss with you very briefly and quickly the similarities between expanded tobacco and popcorn.
Tobacco and corn are both agricultural crops; correct?
A. Yes.
Q. Okay. They both grow in the soil?
A. The plants grow in the soil, yes.

Q. Yes. Okay. And different regions, if you will, produce different types of popcorn and tobacco. Have you ever seen those Orville Redenbacher commercials where he says I have the best tobacco -- I mean, the best corn because it comes from this region?
A. Different growing regions produce different types of both tobacco and corn.
Q. So those are similarities between tobacco and corn; correct?
A. Growing regions?
Q. Growing regions, the fact that they're agricultural crops and they both grow in the soil?
A. I think those are probably similarities.
Q. And then you said when you expand tobacco, you have a larger volume with less weight. And the same is true for popcorn?
A. Less weight per unit volume.
Q. So that's correct?
A. Yes.
Q. Now, let's talk about how popcorn is not like expanded tobacco.

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And, by the way, has the Surgeon General of the United States ever written any type of report about popcorn, to your knowledge?
A. I'm not aware of the Surgeon General ever addressing popcorn.
I used popcorn as an analogy to try to get across to the jury, to make sure I was very clear, that the process of expanding tobacco is really similar to popcorn. It was just an analogy.
Q. Well, I understand that, sir. But I want to

make sure that the analogy is complete. And that's why I'm asking you these questions.
MR. LONG:
Objection to the speech, Your Honor.
Move to strike.
THE COURT:
Ask the witness a question, please, Mr. Bencomo --
MR. BENCOMO:
Yes, Your Honor.
THE COURT:
-- if you have one.
MR. BENCOMO:
I'm happy to, Your Honor. Thank you.
EXAMINATION BY MR. BENCOMO:
Q. Does popcorn cause any of these diseases that the Surgeon General has indicated are caused by smoking of your product, sir?
MR. GAY:
Objection. Relevance.
THE COURT:
Sustained. Next question, please.
EXAMINATION BY MR. BENCOMO:
Q. Mr. Belasic brought up the issue of test panels. Do you remember that discussion?
A. I remember some discussion about that, yes.
Q. Why don't you tell the jury what a test panel is just in general.
A. I'd be happy to.
We have several different types of test panels. And I assume you mean for testing of cigarette performance?

Q. Yes, sir.
A. We have several types of panels. We have an internal panel of experts who can actually very reproducibly gauge the attributes of the cigarette, such as strength, harshness, smoothness, taste qualities and that sort of thing. Those are internal employees.
A more useful panel, actually, is a panel of external people, non-employees, who come in and agree on the definitions of what smoothness means, what harshness means and so forth. And then they evaluate cigarettes and rate them on various attribute scales. And that's usually done in our Research & Development Department but with non-employees.

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And then the most important consumer testing that we do is what we call a mailout. Usually it's like the National Family Opinion Poll mailout, an NFO type mailout, where we mail out to several hundred people a couple packs of cigarettes and have a detailed questionnaire where we ask them how well they like it, whether they would accept that as their usual brand, what they think about what the various attributes of the cigarette are, the taste of it, would they be interested in buying it and that sort of thing.

Q. Thank you.

How do you determine or how do you establish who serves on these panels of experts from outside the company and, let's say, not necessarily in North Carolina?

A. Well, I think you've misunderstood what I

said. I didn't say there was a panel of experts outside the company. The expert panel is inside the company. The people that we use outside are normal consumers who we ask questions.

Q. Okay.

A. Now, what is your question?

Q. My question is then how do you decide how to select those normal consumers?

A. Consumer research groups, marketing research groups, will actually go out and find individuals by calling them on the telephone, writing them letters. They have databases of consumers, and they're broken down into consumers who are smokers. So they'll go out and find smokers who smoke certain types of cigarettes.

For example, if the cigarette I want to evaluate with a panel, an outside panel, is a competitor to, say, one of Philip Morris', Marlboro, I will sometimes get only Marlboro smokers in this panel so that they can evaluate my product against what they're used to.

Q. And just out of curiosity, because I've never participated in that, are you pretty involved as the Executive Director in charge of Research & Development in looking at or establishing the parameters of the test to be conducted?

A. No, that's usually done by our Marketing Research Group. Research & Development will have specific needs. You know, we'll have a new prototype, for example, that we want tested, we'll talk with our Marketing Research people, tell them what we want to know, they actually design the test

and go out and conduct that test.

Q. So as part of the Research & Development function, you do interact with the research people in order to achieve whatever objective you want to achieve for your department?

A. I'm not sure I understood your question. But I think, if I understand, Research & Development interacts with Marketing Research to conduct

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consumer testing.
Q. Have you ever seen the results that come back from these panels?
A. I've seen results from many consumer tests.
Q. Now, have you also seen the extensive questionnaires that you referred to from these various panels?
A. I've seen summaries of the questionnaire results.
Q. Okay. And is it fair to state that the questionnaires, for instance, ask things such as the age, the sex, the weight, the smoking history of an individual?
A. No, I don't think that's accurate. I think the questionnaires will include age, sex, the main brand a person smokes, whether they smoke a second brand, things like that.
Q. Well, that's kind of what I asked you. I said --
A. No, you said weight and you said, I think, something else that's not right.
Q. Well, the only thing-- I did say four things and you said three. I said age -- And I'll break them down, I'd be happy to.

So they do ask about age; correct?
A. Yes.
Q. They ask about sex; correct?
A. Yes.
Q. They ask about the smoking history; correct?
A. Not smoking history. We generally ask what their current usual brand is, if they have a second brand that they'll buy if they can't find the first one or if, in my case, for example, I smoke two brands. So we'll want to know that. But we don't ask smoking history.
Q. All right. Do you ask them, after they have tested your product, what it is that they like about the product or the prototype?
A. Sometimes.
Q. Do you ask them what it is that they don't like about the product?
A. Yes, sometimes.
Q. And do you ask them to describe the taste?
A. That's sometimes asked of them.
Q. And how long has RJR participated in test panels or with test panels to test their new products?
A. I don't know the first time we conducted consumer testing. I think it's been for most of the time, though. Since, certainly, since the fifties.
Q. So since the fifties? For about a half a century, RJR has participated in panels such as these to either develop or improve existing products; is that correct?
A. I think certainly since that long there have been different types of panels conducted, maybe not

exactly like the panel we've just discussed, but

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there have been panels to try to understand what consumers' reaction is to various products as we make changes to them, as we modify them to try to reduce the risks and for other purposes.
Q. As a practical matter, the industry itself, meaning Philip Morris, B & W and Lorillard, also have similar panels; is that not correct?
A. I think they all do some type of consumer testing. They certainly use different methodology, I believe.
Q. And does the number of individuals in these test panels vary depending on what your marketing people want to find out? In other words, is it a group of twenty, a hundred?
A. Well, I think the number of subjects depends on what questions you're trying to answer. And that will dictate, in large part, how many subjects you have to include in the study.
Q. Now, what was interesting to me, sir, is or was your response that you ask about the age, the sex, what it is that they like about a product, maybe what they don't like, but you did not ask or do not ask your subjects about their smoking history; is that not correct?
A. I don't recall seeing a questionnaire that asked them about their smoking history.
Q. Sir, there is nothing that prevents that from being a question in the questionnaire, how long have you smoked, for instance; correct?
A. I don't know what utility it provides. Again, --

Q. That wasn't my question.
A. All right. Your question is what?
Q. My question is there is nothing that prevents you, meaning RJR or the other defendants, from asking the smoking history of an individual who participates in these panels?
A. No.
Q. "Yes" or "No"?
A. No.
And there's nothing that prevents us from asking weight, but it's useless information.
Q. Okay. Do you ask in any of these panels as part of your survey whether or not the individual who is testing your product considers himself to be addicted or habituated to nicotine?
"Yes" or "No"?
A. I've never seen that in a survey.
Q. Do you ask an individual who is part of a test panel whether or not he has problems, trouble breathing?
A. I've never seen that in a survey.
Q. Do you ask them whether or not they have any type of heart condition?
A. I've never seen that in a survey.
Q. Do you ask them whether or not they have any urinary tract problems?
A. I've never seen that in a survey, either.
Q. Do you ask what their pack per day, if you will, history of smoking is?

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A. I think you're mixing up several things. We do ask what consumption they consider they have in a particular day, so how many cigarettes do they smoke

in a day. But, again, it's not historical. I think what we're interested in knowing is how much do you smoke per day now?

Q. And you said that you have been doing panels ever since the fifties; is that not correct?

A. In one form or another. Certainly, internal panels, external panels, the types of panels have changed over the years. But there's been -- there has to be good evaluation of consumer performance, consumer acceptance of products to make changes in the marketplace.

Q. Now, Mr. Belasic yesterday asked you whether or not you could or would follow individuals -- he said you couldn't or wouldn't follow an individual's history for fifty years. Do you remember that?

A. No, I don't remember that.

Q. Okay. Well, then, let me just ask the question this way.

Have you ever followed the smoking history of any of the individuals in your panel so that you can provide information about those individuals to epidemiologists?

"Yes" or "No"?

A. No.

Q. Do you provide any of those subjects with any type of medical monitoring?

A. The answer is "No."

Q. Sir, I believe that Mr. Belasic asked you some questions about additives. And you testified that you are required to disclose those to the government; is that not correct?

A. We are required to disclose those to the

Department of Health and Human Services.

Q. So your disclosing those to the Department of Health and Human Services is not something that you've done as a company out of the goodness of your heart; correct?

"Yes" or "No"?

A. Well, no. Originally, the government required us to do that. We complied. In 1994, it was our decision to public -- make that list public, however.

Q. Do you in that laundry list of compounds or, rather, of -- How would you describe them? I may be describing them wrong.

A. Additives?

Q. Additives.

In that laundry list of additives, do you tell the Department of Health and Human Services which additives go in which particular product?

A. No, we don't. But we do disclose that in some state regulations.

Q. So, in other words, if somebody makes you disclose it, you do it; but, otherwise, you don't?

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Is that correct?
A. Basically, that's generally right.
The additives we use on a brand-by-brand basis is extremely competitively sensitive. And, therefore, we will comply with regulations and we do with the states that require us to disclose it. But we do, in turn, get some guarantee that they're going to protect our trade secrets on the additives that we use on a brand-by-brand basis.
However, there is a general breakdown of

additives on a brand-by-brand basis on our website. So you can go in and look at Camel Light, for example, and you'll get a breakdown of many of the ingredients that are in it.
Q. Okay. But because the information is proprietary, as you suggest, you don't really say, "We have this much of this additive or that much of this additive"? You just do what you're supposed to do under the law; correct?
A. No, that's not true because what we put on the website is not required by any law. We do that for any consumers who are interested in knowing the breakdown of what's in the cigarettes.
Now, what we do not do, because of trade secrets or the competitive sensitivity here, is we don't break down brand by brand publicly and say, "These are every one of the flavor ingredients that are used, in most cases at extremely low levels, but here's the full list of additive ingredients."
MR. BENCOMO:
Thank you. The Court has let me know it's 2:45.
THE COURT:
We will recess at this point for fifteen minutes until 3:00 o'clock by the wall clock.
(Whereupon the jury is excused at this time.)
THE COURT:
Let the record reflect the jury has left the courtroom.
Anything for the record by plaintiffs' counsel?

MR. BENCOMO:
No, Your Honor.
THE COURT:
Defense counsel?
MR. WITTMANN:
No, Your Honor.
THE COURT:
We will recess until 3:00 o'clock by the wall clock.
(Whereupon a brief recess was taken at this time from 2:45 o'clock p.m. to 3:01 o'clock p.m.)
THE MINUTE CLERK:
All rise for the jury, please.
(Whereupon the jury joins the

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proceedings at this time.)
THE MINUTE CLERK:
All rise, please. Recess is over.
Court will come to order. Please be seated.
THE COURT:
You may be seated.
Mr. Bencomo.
MR. BENCOMO:
Thank you, Your Honor.
EXAMINATION BY MR. BENCOMO:
Q. Dr. Townsend, I'd like to turn our attention now to the FTC machine which you spoke at some length about in response to Mr. Belasic's questions.
You realize, do you not, sir, that this case is not about the FTC machine?
MR. BELASIC:
Objection. May we approach?

THE COURT:
You wish to approach?
(Whereupon a bench conference is held at this time as follows:)
THE COURT:
Mr. Belasic?
MR. BELASIC:
If it's not about the FTC machine, then they'd better dismiss that part of their fraud claim that deals with the FTC machine. Because no less than three of their experts, Cummings, Henningfield and Farone, all accused us of fraud against the FTC.
And, in fact, one of their exhibits was how the defendants cheat the machine. So I don't know how Mr. Bencomo can make that speech before he asks the question.
THE COURT:
Mr. Bencomo?
MR. BENCOMO:
I'll rephrase my question, Judge.
THE COURT:
I'm sorry?
MR. BENCOMO:
I will withdraw my question and rephrase it, that's all. I'd be happy to.
(Whereupon the bench conference is concluded at this time.)
EXAMINATION BY MR. BENCOMO:
Q. Sir, I believe that this morning you --
THE COURT:
Mr. Bencomo, are you withdrawing the

previous question?
MR. BENCOMO:
I did. I did, Your Honor. I thought I made myself clear on that. I'm sorry.
May I proceed?
THE COURT:
Proceed.
EXAMINATION BY MR. BENCOMO:

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Q. Sir, this morning, I believe you showed, I think it was, a pack of the cigarette Eclipse?
A. Yes.
Q. Do you have those somewhere?
A. Yes.
MR. BENCOMO:
May I approach, Your Honor?
THE COURT:
Yes.
MR. BENCOMO:
Thank you.
EXAMINATION BY MR. BENCOMO:
Q. Do you list anywhere on the packs of -- on the pack anything concerning the tar and nicotine yield?
A. No, we don't.
We do include that in advertising as agreed with the FTC. We also report that to the FTC annually in their report.
Q. But a consumer who picks up a pack of cigarettes does not have that information readily available to them; is that not correct?
A. That's correct. Unless they look at advertising. And it's clear on advertising.

MR. BENCOMO:
Okay. Your Honor, move to strike. I asked him about the pack.
THE COURT:
Denied. Next question, please.
EXAMINATION BY MR. BENCOMO:
Q. Well, let's talk about the advertisement of the tar and nicotine ratio. Let's take the Eclipse. What exactly is the tar and nicotine ratio for the Eclipse cigarette?
A. The tar level is about three milligrams per cigarette. The nicotine level is about .2 to .3 milligrams. So that the tar-to-nicotine ratio would be about 10.
Q. Now, do you believe, as a Ph.D. chemist, that the average smoker understands what all of that means?
A. Well, that's a pretty broad question.
I do believe that the average consumer understands the relative ranking of tar. I think they're quite familiar with the categories of tar like a full flavor or a higher tar, a lights, an ultra light and even the lowest cigarette. And those category rankings are based on the tar numbers.
I don't believe that most consumers know the exact tar level of the product they're smoking; but the categories, they know that.
Q. Mainly because of the names, light, ultra light, that sort of thing?
A. Yes.
Q. Okay. Now, let's talk about the FTC itself.

They do not regulate any aspect of how you design

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your cigarettes; is that correct, sir?
A. The FTC --
Q. "Yes" or "No"?
A. The FTC does not.
Q. Okay. The vent holes that we discussed, are there vent holes in those Eclipse cigarettes?
A. There are.
Q. Do you mind showing me one for a second, please?
A. I guess I'll have to open a new pack. Sure, I'd be glad to.
Q. Thank you.
And how many sets of holes are there in that particular cigarette?
A. There's approximately 27 holes in one row.
Q. Oh, they're circumferentially --
A. They're around the filter 13 millimeters from the mouth end. For this particular design, there's about 27 holes that are perforated by laser on the cigarette maker.
Q. What about this box of Winston cigarettes? This is another one of your products?
A. Yes.
MR. BENCOMO:
May I approach, Your Honor?
THE COURT:
Yes.
EXAMINATION BY MR. BENCOMO:
Q. Do you mind opening this box, please?
A. Sure.
Q. And while you're doing that, is there any tar

and nicotine ratio or any information about tar and nicotine on that pack? I'm not talking about anywhere else. On that pack?
A. The tar and nicotine numbers by FTC are not printed on this pack. They are in advertising.
Q. Okay. May I see this cigarette?
Now, you'll have to forgive me. These are Winstons. What do you call these?
A. These are Winston full flavor. I think most people would call them Winston Red.
Q. Winston Red?
Okay. Now, where are the holes in this cigarette?
A. Approximately 13 millimeters from the mouth end.
Q. Well, why don't you tell us just where are they visually? I know that you, as the designer, know how many millimeters from the mouth end and so on and so forth. But where exactly are they? I couldn't see them. Maybe you can.
MR. BELASIC:
Objection to the speech, Your Honor.
THE COURT:
Excuse me?
MR. BELASIC:
Objection to the speech.
MR. BENCOMO:
I'll rephrase.
EXAMINATION BY MR. BENCOMO:

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Q. Can you see or can you show the jury where the holes are?
A. If I tear the filter apart and we hold the

tipping up to the light, you can clearly see the holes. The holes are located 13 millimeters from the mouth end, to answer your question.
Q. All right. So hold that cigarette up so the jury can see it, please.
So the bottom line, though, is that a consumer who wants to smoke the cigarette, who is not interested in tearing the cigarette apart, cannot see where those holes are; is that not correct?
A. Well, I don't think without a magnifying glass anyone can see where the holes are unless you tear the filter apart. These are electrostatic perforations that are extremely small. They happen to be small perforations because the higher tar Winston uses a much lower air dilution level than does Eclipse or lights or an ultra light.
Q. Sir, if you would just confine yourself to my question, I would appreciate it.
A. I am trying to answer your question.
Q. Okay. Now, you as the designer of cigarettes, such as that Winston Red, you have the technological capability to color the holes; do you not?
A. What do you mean, "color the holes"?
Q. Well, color them to where a smoker, a consumer, can see that there are actually holes in that product?
A. Well, I think with electrostatic perforations, you're not going to see the holes. So what do you mean, "color the holes"?
Q. There is no way for you technologically to do

something to the paper to show where the perforations are; is that what you're telling us?
A. No, that's not what I'm saying.
I thought you were saying "color the holes." And what I'm saying is the holes are so small, I don't know how to do that.
Q. Okay.
A. If what you're asking is can we mark or is it possible to mark where the vent holes are, that's technologically possible.
Q. You do not mark where the vent holes are in your products?
A. No, we don't.
Q. Okay. The same thing for these Camel Filters that I'm about to hand you?
A. Would you like me to open that?
Q. Please. By all means.
A. (Witness complies.)
Okay. What's your question?
Q. My question is the same: Can the naked eye, without a magnifying glass, see those holes?
A. For Camel Filter, which is the higher tar

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version of Camel, I don't think we use air dilution in this particular product. So there are no holes.
Q. All right. What about these Winstons that are not red? What do you call these? Winston Lights?
A. This happens to be Winston Light.
Q. Do you mind opening that pack?
A. Sure. (Witness complies.)
Q. Are you able to see holes in that particular brand of cigarettes?

A. Yes.
Being a lights, we use larger holes. So we're not using the electrostatic perforations which are real small; we are using lasers to actually burn the perforations.
Q. Okay. Let me see one of these packs. I think there was something on one of these packs that you just opened. And forgive me, I don't know which one it was.
Why don't you tell the jury on this Camel Filters pack that I am now showing them what it is that is attached to the back of the box, if you could just pull it out for the benefit of the jury and the record, please?
A. Sure.
This is actually an insert that's placed onto the back of the Camel. It is a Camel cash program where the smoker can collect these coupons and redeem them for certain merchandise.
Q. May I see that, please?
A. Sure.
Q. Nothing prevents you as a manufacturer from telling the public, the consumer, just as, for instance, you insert this Camel cash, telling them, oh, by the way, these cigarettes are designed with a filter and there are holes 13 millimeters from where?
A. From the mouth end.
Q. From the mouth end and make sure you don't block them because, if you do, they will not work the way they're supposed to work?
MR. SCHNEIDER:

Objection, Your Honor. Preemption.
THE COURT:
Approach the bench.
(Whereupon a bench conference is held at this time as follows:)
THE COURT:
Mr. Schneider.
MR. SCHNEIDER:
Yes, Your Honor.
The thrust of the question is that the manufacturer ought to provide additional information about the location of vent holes and how to smoke a cigarette, yet, bear warnings on the pack. Those warnings are deemed adequate. That to suggest that any

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additional information needs to be provided is preempted, and we object for that reason.

THE COURT:

My recollection of that question was is there anything that prevents you from giving the smoker instructions about holes and suggesting that they not block the holes?

You think that's preempted by the warnings of law?

MR. SCHNEIDER:

Yes, Your Honor. Because it's basically saying is there anything that prevents you from giving this additional information to the smoker, as if we have some obligation to do so. And that question and the inference of the question is preempted.

THE COURT:

Overruled.

MR. SCHNEIDER:

Okay.

(Whereupon the bench conference is concluded at this time.)

THE COURT:

The objection is overruled. Answer the question, if you're able to.

Would you like me to read it back?

THE WITNESS:

I think I remember it, Your Honor.

THE COURT:

Answer the question, please.

THE WITNESS:

Yes, there's nothing technically that prevents us from doing as you suggest.

EXAMINATION BY MR. BENCOMO:

Q. Thank you.

Now, I'd like to ask you about the overwrap that you discussed earlier very quickly. I believe that the tobacco that is placed in the overwrap is inserted three millimeters past the overwrap; is that correct?

A. The overwrap extends onto the tobacco rod three millimeters.

Q. Three millimeters.

And there is tobacco in that section; is that not correct?

A. There's tobacco in that three millimeter portion that the tipping paper, usually cork colored, extends onto the tobacco rod.

Q. And is it your position, sir, that smokers

just don't smoke to that level?

A. I think it does not happen very often. I think on those occasions where a person does smoke into the overwrap, right up to the filter, they find very quickly that that really doesn't taste good. And sometimes it will actually ignite into a flame. So I don't think people do that very often.

Q. Well, if we assume what you just said, why

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put that in there?
A. Why what put what in there?
Q. Why put the extra three millimeters of tobacco in there if the majority of the people don't smoke to there?
A. Well, there's got to be some way of attaching the tobacco rod and the filter together.
Are you suggesting we take three millimeters of tobacco out before we attach it?
Q. Sir, I'm not the designer.
A. Well, I'm just trying to understand your question.
Q. So please just answer my question.
My question is very simple. Why put three more millimeters of your product if you know that the smoker is not going to smoke that part of the cigarette?
A. It's the way the cigarette is constructed. We must attach the filter and the tobacco rod together, which means there has to be a piece of paper that connects the two. That's just the way it is.
Q. Now, can you do a quick calculation? And, if you can't, I understand. But I was trying to figure

out what three millimeters of the tobacco product weighs and then multiply that by 90 billion and arrive at how many more cigarettes you could manufacture if there wasn't -- if you weren't putting that in there?
A. Well, I think one could go through that exercise. But it doesn't make sense to me because I don't know how you can attach the two and take the tobacco out. It's not going to be rigid enough to hold together if you take that tobacco out.
I mean, you're just simply, that's all we're doing, is attaching the tobacco rod to the filter.
Q. Now, when you were asked earlier about the vent hole by Mr. Belasic, he asked you where the cigarette had to be placed, do you recall that, onto the FTC machine?
A. Yes.
Q. And he said -- and I wrote this down -- "I believe it's about 11 millimeters." Do you remember him saying that?
A. Yes.
And my answer to Mr. Belasic was, "No, it's exactly 11 millimeters."
Q. Okay. And that's what I recall, also, that your answer was, "It's exactly 11 millimeters."
And you would agree, would you not, that human beings just don't smoke to exactly 11 or 13 millimeters? That's just not the way it works?
A. What do you mean, "smoke to"?
Q. Well, what I'm saying is not smoke to. They put the cigarette at that 11 or 13 millimeter mouth end?

A. No, I think people, as I said in my

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testimony, people can cover those vents. It can and does happen. It's not a very prevalent occurrence as we find from studying spent filters taken from ashtrays in public places. Just it does not happen often, but it does happen.

Q. Sir, if I were to give you lipstick, and I'm not going to do that, even though I asked somebody to buy me some lipstick to bring here today --

MR. GAY:
Objection.

EXAMINATION BY MR. BENCOMO:

Q. If I were to give you some lipstick, isn't that kind of the way that you test where people's mouths go onto cigarettes? Don't y'all do that?

A. That's not the way we test, no.

Q. Well, how do you do it?

A. Actually, when people's lips go onto a filter, they leave behind saliva. In some cases, in most cases, trace levels of saliva. But in that saliva is protein. And you can actually stain the filter with a chemical called ninhydrin that will actually react with the protein and turn blue.

So you can take a filter, a filter from an ashtray much like this, and stain it with ninhydrin and you can see where the lips have been in the past.

Q. Are you willing to acknowledge that if we were to give that type of test to nineteen individuals, that no one individual would necessarily match up exactly with the other one?

A. I would agree that individuals generally

don't match up with one another. It's an extremely variable behavior. But I do agree -- believe from our studies that some people can cover the vent sometimes with their lips, but it's not a prevalent behavior.

Q. Now, the FTC testing method, you are on record as stating that that record is not the way that people smoke; is that correct?

A. That record is not the way people smoke?

Q. Well, what I'm saying is that the machine does not smoke like a human being?

A. Well, certainly, the machine, the FTC machine, does not represent how a person smokes.

Q. And when did the FTC machine first start or come into operation?

A. The FTC established that method in 1967.

Q. Did you tell your consumers in 1967 or 1968 about your concerns regarding the FTC testing method?

MR. LONG:
Objection. Preemption.
THE COURT:
Sustained. Next question, please.
MR. BENCOMO:
Your Honor, may we approach?
THE COURT:
Yes.
MR. BENCOMO:
Thank you.

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(Whereupon a bench conference is held at this time as follows:)
THE COURT:

Mr. Bencomo?
MR. BENCOMO:
Yes, Your Honor.
The reason why I wanted to approach before Your Honor made the ruling but I want Your Honor to reconsider it is because preemption did not come into effect until 1969. And my questioning was very, very specific about '67 or '68.
THE COURT:
Your response?
MR. LONG:
He's correct that the labeling act preemption doesn't come into effect. But as we've argued before, under the FTC regulatory scheme, that area is preempted under conflict preemption.
MR. STEPHEN HERMAN:
And denied three times.
THE COURT:
I'm sorry?
MR. STEPHEN HERMAN:
That's been argued three times and Your Honor has denied that three times.
MR. LONG:
I'm not sure of that.
In Henningfield, we did get preemption concerning the FTC test granted, to my recollection, or to Mr. Belasic's recollection.
THE COURT:
Well, I don't have the ability to check

as to which one of you is correct in this conference. I'm going to decline to change my ruling.
Next question, please.
(Whereupon the bench conference is concluded at this time.)
MR. BENCOMO:
Would you be kind enough to pull up Demonstrative DDA-000615, please?
Your Honor, may we publish?
THE COURT:
Is there any objection to the motion to publish that demonstrative, Counsel?
MR. BELASIC:
I'm sorry, Your Honor. No, there is no objection.
THE COURT:
You may publish it.
MR. BENCOMO:
Thank you, Your Honor.
EXAMINATION BY MR. BENCOMO:
Q. Now, you talked about this chart yesterday;

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is that not correct, Dr. Townsend?
A. I believe it was yesterday, yes.
Q. Okay. The only thing that I wanted to ask about it, because Mr. Belasic did not, is the source is the FTC reports; is that not correct? At the bottom left-hand corner?
A. The tar and nicotine data comes from FTC reports. The other information on here is provided from information from Reynolds.
MR. BENCOMO:

You can take it down. Thank you.
EXAMINATION BY MR. BENCOMO:
Q. Now, sir, do you have a similar chart that you have done that shows the tar and nicotine yield reduction for actual smokers for the years indicated on that demonstrative, DDA-000615?
"Yes" or "No"?
A. No, there's no way to measure for actual smokers their intake or their exposure from cigarettes over that period of time.
Q. So the chart that we just showed the jury, DDA-000615, does not apply to people? You can show the reduction all day long but it does not apply to people; am I correct? That chart?
A. That's not exactly correct.
This is machine-generated data using the FTC. And in that respect, it does not apply to people. Where you're incorrect is that lower tar does result in overall less exposure to smokers as a group.
So as the tar level has come down, there is plenty of evidence in the scientific literature that lower tar cigarettes present less tar to smokers. So in that sense, it does apply to smokers over that time.
Q. Now, that FTC machine does not have fingers; correct?
A. It does not have fingers.
Q. It doesn't have lips?
A. No, it has a little seal that holds the cigarette into the smoking port.
Q. Do you know what else that chart or, rather, that machine does not have?

A. Is that a question?
Q. Yes.
Do you know what else it doesn't have?
MR. LONG:
Objection. Vague.
A. No, I don't know.
EXAMINATION BY MR. BENCOMO:
Q. Are you aware that it does not have a bladder, sir?
MR. LONG:
Objection.
EXAMINATION BY MR. BENCOMO:
Q. "Yes" or "No"?
MR. LONG:
Objection. Relevancy, Your Honor.

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THE COURT:
Overruled. Answer the question, if you're able to.

A. Are you asking if the smoking machine has a human bladder?

EXAMINATION BY MR. BENCOMO:

Q. Are you aware as to whether or not it has a bladder? You choose what type of bladder, sir.

A. I'm just trying to understand your question. Are you asking about a human bladder?

Q. Yes.

Does it have something that resembles a human bladder?

A. No, of course not.

Q. Does it have something that resembles a pair of lungs?

A. No, of course not.

Q. And, of course, you know that it doesn't have a heart; does it?

A. (No response.)

Q. Sir, can you tell this jury that whatever the level of the nicotine was in your products, between 1954 and whenever that chart that you made up finishes, does not cause lung cancer or the other diseases that we have mentioned in smokers?

A. I think that --

Q. "Yes" or "No"?

A. Yes, I can tell you. That's your question.

Q. Please.

A. I think it's clear from the scientific literature that nicotine does not cause lung cancer. Your question was specific to nicotine.

Q. Tar and nicotine?

A. That's not what you said. You said --

Q. Well, then, I apologize.

Let me rephrase it then. Can you tell this jury that between the level of tar and nicotine for any period between 1954 and the present does not cause lung cancer or the other diseases in smokers, according to that chart?

A. I would not begin to say that tar and nicotine over that -- over that range does not cause lung cancer.

Q. Do you remember when Mr. Belasic said to you that some people have referred to the above as an illusion? Do you remember that?

A. I remember the word "illusion" used. I don't remember the context.

Q. It was in the context of the FTC machine and

the test machine and those sorts of things. Do you remember that now?

A. Vaguely, yes.

Q. That was one of the times that I got the impression that your answer was scripted. And you said --

MR. BELASIC:
Objection, Your Honor.

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MR. LONG:
Objection to the speech, Your Honor.
MR. BENCOMO:
Your Honor, I'll rephrase the question.
THE COURT:
That was not a question, Mr. Bencomo. And I would remind you that it's a question-and-answer format. That was a statement. And it's improper. Ask the witness a question, if you'd like to.
MR. BENCOMO:
And I apologize.

EXAMINATION BY MR. BENCOMO:

Q. Dr. Townsend, do you recall that in response to that question, you said, and I quote, "I don't understand what you mean by an illusion. I disagree with that."
Do you recall that?

A. Just generally. I don't remember the specifics about it.

Q. Well, I took it down verbatim.
And you didn't say, "I don't understand what you mean by 'illusion,' Mr. Belasic. Would you please explain the meaning of the word?"

MR. LONG:
Objection to the speech, Your Honor.

EXAMINATION BY MR. BENCOMO:

Q. Do you remember that?

A. I don't remember that exactly, no.
THE COURT:
The objection is overruled.

EXAMINATION BY MR. BENCOMO:

Q. Do you know what the definition of "illusion" is?

A. Well, not exactly. I think I generally know what an illusion is.

Q. Okay. Well, why don't you tell the jury what you believe an illusion to be, the definition of "illusion"?

A. Well, in a sense, it's something that is appeared to be seen but not necessarily real.

Q. Have you seen or looked up the definition of "illusion" in Webster's dictionary which identifies it as something or someone that deceives by creating a false impression? Have you ever looked that up in the dictionary, sir?

A. I don't think I've ever looked up "illusion" in a dictionary.

Q. Now, sir, is it your testimony that the reason why you, meaning Reynolds, and the rest of the industry have lower tar and nicotine cigarettes is because of the industry's work in trying to design a safer cigarette?

A. It is the result of the industry's work, including Reynolds' scientists, that has resulted in a major reduction in tar, nicotine and carbon

monoxide yields. And that that has represented some

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level of risk reduction.
Q. And I believe -- correct me if I'm wrong -- that you earlier said that that reduction somehow makes those products safer? Or you believe them to be safer?
A. I believe reducing relative risk implies that it's a safer cigarette, certainly. Not a safe cigarette but a safer cigarette.
Q. And is it not a fact, sir, that you've testified in the past that if consumers had not accepted lower tar products, that the industry would not be selling lower tar level cigarettes today?
A. Yes, I have testified to that. And I think in this courtroom. If consumers haven't accepted the modified products, the lower tar products or even Eclipse, then you haven't done anything to reduce risk. Consumers must accept and buy those products as opposed to other products.
Q. So if consumers did not, for instance, like the taste of light cigarettes, and didn't make them acceptable, you would still be selling the highest level tar and nicotine cigarettes that the market warranted; is that not correct?
A. Well, I'm not sure. I mean, we're --
Q. "Yes" or "No"?
A. I can't answer "Yes" or "No" to that.
That's pure speculation. Because if smokers didn't trade down to lights, which, by the way, is the highest -- the most prevalent category now, if they hadn't transferred down to that, then it's possible that scientists in the industry and at

Reynolds would have taken different approaches. For example, we may have tried very unique cigarette designs. I can't speculate on what would have happened.
Q. But you don't back away from what you've told other courts and other juries, that if consumers had not accepted the lower tar products, that the industry would just not be selling lower tar level cigarettes; correct?
A. I think that's absolutely right. If consumers don't accept it in the marketplace and they don't buy the product, then it's not working, it's not doing anything useful.
MR. BENCOMO:
Excuse me.
Carl, the Monograph 13, are you able to pull that up for me, please?
And would you publish that to the witness and to The Court and to opposing counsel?
EXAMINATION BY MR. BENCOMO:
Q. Sir, do you recognize that document?
A. I recognize Monograph 13 from NCI.
Q. And that is a document, a monograph, that you know to be an official document of the National Cancer Institute?
A. It is a National Cancer Institute publication.
Q. And that is a government publication?

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A. Yes.
MR. BENCOMO:
May we publish, Your Honor?

MR. GAY:
No objection, Your Honor.
THE COURT:
You may publish it.
EXAMINATION BY MR. BENCOMO:
Q. And the heading of Monograph 13 reads "Risks Associated With Smoking Cigarettes With Low Machine-Measured Yields of Tar and Nicotine."
Did I read that correctly, sir?
A. I believe you did.
Q. Okay. And what they are referring to is the risks associated with smoking cigarettes that have the low -- the machine-measured yields of tar and nicotine, in other words, according to the FTC method; correct?
A. I think it is according to the FTC method.
MR. BENCOMO:
Carl, would you be kind enough to go to the "CONCLUSIONS" section of that monograph, please? Which is the last page.
Your Honor, may we publish?
Carl, it's not on the screen.
Thank you.
MR. BELASIC:
No objection.
MR. BENCOMO:
May we publish, Your Honor?
THE COURT:
You may publish it.
MR. BENCOMO:
Thank you.
Now, Carl, would you be kind enough to

highlight the "CONCLUSIONS" section and blow that up, please?
EXAMINATION BY MR. BENCOMO:
Q. Dr. Townsend, I'd like for you to please follow with me as I read those conclusions.
The first is, and I quote, "Epidemiological and other scientific evidence, including patterns of mortality from smoking-caused diseases, does not indicate a benefit to public health from changes in cigarette design and manufacturing over the last fifty years."
Did I read that correctly, sir?
A. You read that right.
Q. And the first, the very first word is not "statistical," it's not "anything," but what it is is "epidemiological"; is that not correct?
A. That is the first word.
Q. And it says that all of that data does not indicate a benefit to public health from changes in cigarette design and manufacturing over the last fifty years; correct?
A. That's what it says.

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Q. And you've told this jury what great changes, what great strides you have made in the area of cigarette design; is that not correct, sir?
A. I have. And I'm proud of it.
Q. The second conclusion, and I'll quote, "For spontaneous brand-switchers, there appears to be complete compensation for nicotine delivery, reflecting more intensive smoking of lower-yield cigarettes."
Did I read that correctly?

A. You read that correctly, also.
Q. And what it talks about is complete compensation for nicotine delivery. Do you see that?
A. I think that's what it says.
Q. Okay. Now, you told Mr. Belasic today that there is, in your opinion, and that of your company's, not complete compensation for nicotine delivery when it comes to the smoking of lower-yield cigarettes; did you not, sir?
"Yes" or "No"?
A. That generally paraphrases what I said.
What I did say was compensation can occur, it does occur, but it's clearly not complete from the available scientific literature. Compensation tends to be on the order of 50 percent on switching.
Q. Does the National Cancer Institute say compensation is not complete? Does that say it is not complete?
MR. GAY:
Objection. Repetitious.
THE COURT:
Sustained. Next question, please.
EXAMINATION BY MR. BENCOMO:
Q. Now, I'd like for you to follow along as I read the third paragraph of the conclusions. "Widespread adoption of lower yield cigarettes in the United States has not prevented the sustained increase in lung cancer among older smokers."
Did I read that correctly, sir?
A. You did.
Q. The fourth paragraph, and if you'll read

along with me, reads, and I quote, "Many smokers switch to lower yield cigarettes out of concern for their health, believing these cigarettes to be less risky or to be a step toward quitting. Advertising and marketing of lower yield cigarettes may promote initiation and impede cessation, more important determinants of smoking-related diseases."
Did I read that correctly, sir?
A. You did.
Q. And the fifth and last conclusion reads, and I'll quote, and if you'll follow along with me, "Measurements of tar and nicotine yields using the FTC method do not offer smokers meaningful information on the amount of tar and nicotine they will receive from a cigarette."

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Did I read that correctly?
A. Yes, you did.
Q. "The measurements also do not offer meaningful information on the relative amounts of tar and nicotine exposure likely to be received from smoking different brands of cigarettes."
Did I read that correctly, sir?
A. You did.
Q. And, sir, do you disagree that what that fifth conclusion is really saying is that the measurements of tar and nicotine yields using the FTC method are really a deception because they create a false impression?
A. I don't agree with that.
Q. Now, you were asked certain questions by Mr. Belasic about the Surgeon General and whether or not the Surgeon General did different things in the area

of design of cigarettes.
The Surgeon General is not in the tobacco business; is he, sir?
A. The Surgeon General does not work for a tobacco company. I'm not sure I understood the first part of your question, however.
Q. Well, they're not designers of cigarettes; are they, sir?
A. The Surgeon General is not a cigarette designer. Is that your question?
Q. That's correct.
And the Surgeon General is not a cigarette company?
A. I think that's correct, also.
But the Surgeon General does review and evaluate quite a lot of information related to cigarettes and he has spoken about cigarettes in a variety of reports over the years.
Q. Mr. Belasic -- God bless you -- Mr. Belasic also asked you about one aspect of a Surgeon General report. And he asked you whether or not the conclusions had been refuted.
Do you recall that?
A. Not exactly.
MR. BENCOMO:
Okay. And I believe -- and you have to forgive me -- if you'll pull up DDA-000623, I believe that may be the one that you were referring to.
Your Honor, may we publish?
MR. GAY:
No objection, Your Honor.

THE COURT:
You may publish.
MR. BENCOMO:
Thank you.
EXAMINATION BY MR. BENCOMO:
Q. Now, do you remember that particular chart that you looked at?
A. Of course.

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MR. BENCOMO:
Okay. You can take it down now.
EXAMINATION BY MR. BENCOMO:
Q. Now, sir, do you not agree that the Surgeon General reports are not a Chinese menu that the tobacco industry can pick and choose little segments from in order to decide, well, this really is something the Surgeon General has done that has not been refuted but not talk about the rest of the Surgeon General's reports?
MR. GAY:
Objection. Compound. Argumentative.
THE COURT:
Sustained. Don't answer that question.
Next question, please.
MR. BENCOMO:
Certainly, Your Honor.
EXAMINATION BY MR. BENCOMO:
Q. Sir, are you able to pick and choose from the -- any aspect of the Surgeon General's reports or do you take them 100 percent at face value?
A. I don't think a good scientist takes anything at 100 percent value. I don't know of a single book that I've read, scientific book, that I agree with

everything that's said in there. Many things I agree with, some things I don't agree with.
And I don't think that's any different than the Surgeon General's report. The Surgeon General has provided very useful information in the series of Surgeon General reports over the years. Not everything that's said in there is correct, just as not everything in this Monograph 13 is correct.
MR. BENCOMO:
Sir, let's put up -- Let's put up, Carl, the conclusions from Monograph 13 that we just had up. And blow them up, please.
EXAMINATION BY MR. BENCOMO:
Q. You just said -- and correct me if I'm wrong -- you just told this jury that not everything in this Monograph 13 is correct; did you not?
A. I did.
Q. Okay. Now, let's go one by one and tell me, tell this jury, which one of these five conclusions is wrong, sir, or incorrect.
A. I'll be happy to.
The first one is clearly wrong.
Q. Thank you.
A. The first one --
Q. Thank you.
MR. GAY:
Objection. Objection.
MR. BELASIC:
Constant interruption, Your Honor.
THE COURT:
Would you finish your answer, please,
Mr. Witness?

THE WITNESS:

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Thank you, Your Honor.

The first conclusion is clearly wrong because there is strong epidemiology that shows a significant reduction in lung cancer. And that strong epidemiology and that conclusion is, in fact, noted in Chapter 4 in the "CONCLUSIONS" section as well as in the text.

The authors of this monograph go on to arrive at Conclusion Number 1, which is wrong, by saying essentially -- and I'm going to paraphrase it -- the epidemiology is there for lung cancer, it presents -- the lower tar products present a lower risk of lung cancer, specifically, but the lung cancer rates have not come down together with that; and, therefore, we don't think there's a real benefit in low-tar cigarettes. Which is not a logical scientific argument. The risk is what it is as measured by epidemiology. And that has been reduced.

EXAMINATION BY MR. BENCOMO:

Q. Let me read then from Conclusion Number 1. And I quote again, "Epidemiological and other scientific evidence, including patterns of mortality from smoking-caused diseases, does not indicate a benefit to public health from changes in cigarette design and manufacturing over the last fifty years." Did I read that correctly, sir?

MR. GAY:

Objection. Repetitious.

MR. BENCOMO:

Your Honor, may we approach?

THE COURT:

You may approach.

(Whereupon a bench conference is held at this time as follows:)

THE COURT:

Mr. Gay.

MR. GAY:

Your Honor, he's already read this at least three times, this first one. And he's doing it again.

MR. BENCOMO:

Except the problem is, Judge, that when this witness -- I have the right to cross-examine him and traverse him on this when he says that that conclusion is absolutely incorrect. And I have the right to come back and ask him questions about it.

THE COURT:

I understand that.

It's not necessary to read it again. We've heard it three times and then you ask him if you read it correctly and he parrots again, "Yes, you read it correctly." Why don't you just refer him to it and then ask him a question instead of taking all that time?

MR. BENCOMO:

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That's fine.
THE COURT:
The objection of repetition is overruled

with the exception of what I just told you.
MR. BENCOMO:
Your Honor, what do you want to do for the --
THE COURT:
We're going to recess at 4:00 o'clock.
(Whereupon the bench conference is concluded at this time.)
THE COURT:
The repetition objection is sustained.
If there's a question to be put to the witness, Mr. Bencomo, please ask a question.
MR. BENCOMO:
Yes, Your Honor.
Because of the time factor, I am going to ask that that be taken down and get into some other area with the witness.
Carl, would you be kind enough to pull up Exhibit AN-000853, please? And would you please publish it to The Court and to the witness and to opposing counsel?
May we publish, Your Honor?
MR. BELASIC:
It's already been admitted, Your Honor. No objection.
THE COURT:
You may publish it.
EXAMINATION BY MR. BENCOMO:
Q. Sir, Mr. Belasic asked you yesterday --
And, Carl, just highlight this press release as to what it says on the title, the first line, "Reynolds Tobacco Will Use --"

There you go. Thank you.
You talked about this particular press release yesterday. Do you recall that?
A. I do.
Q. Okay. And what you didn't talk about is the date on this particular press release at the bottom right-hand corner.
MR. BELASIC:
Objection. It misstates the record.
EXAMINATION BY MR. BENCOMO:
Q. Would you please share that with the jury?
THE COURT:
I'm sorry?
MR. BELASIC:
Objection. It misstates the record.
THE COURT:
Well, we've transcribed yesterday and I'll rule on it after I read the transcript. I have no other way to rule on your objection other than to do that.
MR. BELASIC:
I understand.

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EXAMINATION BY MR. BENCOMO:
Q. I'll be happy to rephrase the question.
Sir, can you just tell us what is the date of this particular press release?
A. December 4th, 1999.
Q. Okay. Now, do you know when this lawsuit was filed?
A. This particular one?
Q. Yes, sir.
A. No, I don't. Not exactly.

Q. Would you accept the fact that it was filed in 1996?
A. I have no idea.
Q. Would you accept that, sir?
A. For what purpose? I mean, I don't understand.
Q. That's fine. That's fine. You don't have to accept it.
Would you or do you know what the class definition is in this case?
A. Not exactly. I've seen -- I've seen it some time ago, but I can't recall.
Q. And do you know what smokers and former smokers it covers?
A. I can't remember.
Q. If I were to tell you that it was smokers and former smokers who began smoking or were smoking prior to 1988, would you accept that?
A. Again, I have no idea whether that's accurate or not.
Q. Okay. But you do agree that this is a press release of 1999?
A. It is a press release that was made in 1999 that describes our conversion to low nitrosamine, flue-cured tobacco.
Q. Sir, I'm trying to save time. I just asked you about the date.
MR. GAY:
Objection. Repetitious.
MR. BENCOMO:
The next document that I ask be pulled up is AN-000741. And I believe that that was

published yesterday.
May we publish, Your Honor?
MR. BELASIC:
No objection.
THE COURT:
You may publish it.
MR. BENCOMO:
Carl, would you just highlight the title and the date in the upper right-hand corner?
EXAMINATION BY MR. BENCOMO:
Q. And that particular press release was issued when, Dr. Townsend?
A. April 29th, 1999.
Q. Thank you.
MR. BENCOMO:

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Your Honor, it's four minutes to 4:00 and I'm about to go into another area. It may be or my suggestion would be that we come back tomorrow because we only have about four minutes.

THE COURT:

We will recess until tomorrow morning, 9:30.

MR. BENCOMO:

Thank you, Your Honor.

THE COURT:

Thank you.

(Whereupon the jury is excused at this time.)

THE WITNESS:

May I step down, Your Honor?

THE COURT:

Yes.

Let the record reflect the jury has left the courtroom.

Anything for the record by plaintiffs' counsel?

Hearing nothing, anything for the record by defense counsel?

MR. WITTMANN:

No, Your Honor.

MR. BELASIC:

Your Honor, I wanted to withdraw my last objection. I believe that what Mr. Bencomo was saying was that we had not discussed the date, that he was somehow attacking the witness for leaving the date out.

I saw him scream after I made the objection that I think he was saying that we did discuss the date. So I've been led to believe that that's what he said, so I withdraw the objection.

MR. BRUNO:

We didn't discuss a date. We did not discuss a date.

THE COURT:

We will recess until 9:30.

(Whereupon the proceedings were adjourned at 3:58 o'clock p.m.)

* * * * *

REPORTER'S CERTIFICATE

I, CHERYL FOURNET HUFFMAN, Registered Merit Reporter, in and for the State of Louisiana, as the officer before whom this testimony was taken, do

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hereby certify that this testimony was reported by me in the stenotype reporting method, was prepared and transcribed by me or under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding; that I am not related to counsel or to the parties herein, nor am I otherwise interested in the outcome of this matter.

_____

CHERYL FOURNET HUFFMAN, RMR, CRR
Registered Merit Reporter
Certified Realtime Reporter
(No. 75009)
Huffman & Robinson, Inc.
One Shell Square, Suite 250 Annex
701 Poydras Street
New Orleans, Louisiana 70139
(504) 525-1753 (800) 749-1753

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